Columbia College
in the City of New York

SCHOOL OF LAW.

METHODS OF INSTRUCTION.

There is no uniform method of instruction in this School. Each instructor is at liberty to pursue the method of instruction which, in his opinion, will be productive of the best results. At the present time three methods of instruction are used:

First, the system of instruction by lectures with references to and the incidental discussion of cases. This method prevails in the courses in Public Law.

Second, the system of instruction based on the study and discussion of some standard treatise, and the consideration of cases by way of illustration. This method prevails in a few of the courses in Private Law.

Third, the system of instruction based on the study and discussion of cases. This is the method generally used in the courses in Private Law. In the first year, however, the study of cases in Contracts, Pleading, Torts, and Real and Personal Property, is preceded or accompanied by the study of a standard treatise.

As the system of instruction based upon the study and discussion of cases seems to be much misunderstood, the following explanation of that system is given:

It is proper in the first place to state what this system of instruction by means of cases is not.

1. It does not consist in the study of isolated propositions of law.

2. It does not proceed on the theory that the law consists of an aggregation of cases.

3. It does not proceed on the theory that to learn law one must *memorize cases*.

4. It does not proceed on the theory that law is to be taught or learned in a law school by the reading of cases merely.

5. It does not leave the student to deduce the principles of law from the cases *by himself*.

The case system consists in putting into the hands of the student a number of cases on any given subject, taken not at hap-hazard, but selected by the professor with a view to developing the law on that subject. The theory on which this proceeds is that it is only by regarding law as a science that one can justify its being taught in a university, and regarding it as a science, the student should not only be encouraged to investigate the law in its original sources, but should be distinctly discouraged from regarding as law, what is, in fact, simply the conclusions of writers whose opinions are based upon material to which the student can be given access.

The case system then proceeds on the theory that law is a science, and, as a science, should be studied in the original sources and that the original sources are the adjudged cases and not the opinions of text writers, based upon the adjudged cases. But the law is an applied science and therefore to appreciate thoroughly the principle involved in a given topic the student should deal with it in its application, and as he learns these principles in their application they are not a mere abstraction, but have assumed to him a concrete form, and he is prepared to apply them in mastering new problems. Instead of reading about principles he is studying and investigating the principles themselves. Under this system the student is taught to look upon law as a

science consisting of a body of principles to be found in the adjudged cases. The student is not simply given the case and asked to find out as best he can what it is, but each case is accompanied by an elaborate explanation and classification. In comparing the system of teaching by cases with the ordinary text-book system, it should not be forgotten that the decision of the court is not simply a judgment for the plaintiff or for the defendant upon a given statement of facts, but that the reasons therefor are given at length, and the opinion of the court giving the reasons for the conclusion reached, is really the only authoritative treatise which we have in our law.

A system in which principles are studied in their application to facts would seem to combine in the highest possible degree the theoretical and practical. In no other way can a student so thoroughly acquaint himself with the methods used by judges in applying principles of law to the facts before them. It must be borne in mind that this method of teaching does not consist in lectures by the instructor, with references to cases in support of the proposition stated by him. The exercises in the lecture room consist in a statement and discussion by the students of the cases studied by them in advance. This discussion is under the direction of the instructor, who makes such suggestions and expresses such opinions as seem necessary. The student is required to analyze each case, discriminating between the relevant and the irrelevant, between the actual and possible grounds of decision. And having thus discussed the case, he is prepared and required to deal with it in its relation to other cases. In other words, the student is practically doing as a student what he will be constantly doing as a lawyer. By this method the student's reasoning powers are constantly developed, and while he is gaining the power of legal analysis and synthesis, he is also gaining the other object of legal education, namely, a knowledge of what the law actually is.

It is obvious that the power which this practice gives him of analyzing the complicated facts of a case, and of clearly

and concisely stating them, is what in no small degree distinguishes the good lawyer from the poor or indifferent lawyer.

From the foregoing explanation it is evident:

1. That the system is not open to the charge of regarding the law as a mere aggregation of cases. Indeed, the system rests on the fundamental doctrine that, while the adjudged cases are numerous, the principles controlling them are comparatively few, and can and should be thoroughly mastered.

2. That the system does not proceed on the theory of learning law by the reading of cases only, as the student has the constant help of the instructor by way of suggestion, criticism, and the formal statement of propositions of law.

3. That the system, if not open to the objection just mentioned, cannot be open to the objection that the student is required to deduce the principles from the cases *by himself*. Even before the discussions and suggestions of the class room he has the benefit of the opinion of the court in every case, and of the argument of counsel in many cases, to aid him in reaching his first impressions.

4. That instead of involving the mere memorizing of cases, the danger to guard against is that the student may not have a sufficient regard for decisions which in his opinion are not based on principle. Judge Story's attitude when presiding at a moot court is very much the attitude of the professor and his class in the lecture room. Judge Story is quoted as saying, when presiding at a moot court: "Gentlemen, this is the High Court of Errors and Appeals from all other courts in the world. Tell me not of the last cited case having overruled any great principle,—not at all. Give me the *principle*, even if you find it laid down in the Institutes of Hindu Law."

5. That as the cases are selected to develop a particular branch of law, nothing is more erroneous than to suppose that the system consists of the study of isolated propositions. To say that the study of cases is only the study of isolated propositions, is to deny that the law has been developed through the cases.

It is instructive to know what men, other than those engaged in teaching under this system, think of it. Three such persons may be quoted, whose opinions ought to have weight. In a recent address, Mr. James C. Carter, who, if not the leader of the New York Bar, is certainly second to none, expressed himself as follows:

"What is it that a student goes to a Law School to learn? What is it to begin the study of what we call 'the law'? What is this thing which we call 'law,' and with the administration of which we have to deal? Where is it found? How are we to know it? It is not found in that code which was proclaimed amid the thunders of Sinai! It is not immediately and directly found in the precepts of the gospel. It is not found in the teachings of Socrates or Plato or Bacon. It is alone found in those adjudications, those judgments which, from time to time, its ministers and its magistrates are called upon to make in determining the actual rights of men.

"What was our former method of acquiring it? Going primarily to those judgments? No, for the most part the basis of these investigations was in the study of text-books, the authors of which, if they had acquired any knowledge of law for themselves, must have obtained it by resorting to those original sources. We, therefore, got it at second-hand. I think the result of all investigations concerning the method by which any science may be acquired and cultivated, has been to teach us to go to the original sources, and not to take anything at second-hand.

"Now, is this method open to the objection that the study of cases is apt to make the student a mere case lawyer? Not at all. The purpose is to study the great and principal cases in which are the real sources of the law, and to extract from them the rules which, when discovered, are found to be superior to all cases.

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"This method of studying law, by going to its original sources, is no royal road, no primrose path. It is full of difficulties. It requires struggle. If there is anything which is calculated to try the human faculties in the highest degree, it is to take up the complicated facts of different cases; to separate the material from the immaterial, the relevant from the irrelevant; to assign to each element its due weight and limitation, and to give to different competing principles and rules of law their due place in the conclusion that is to be formed; and I know, on the other hand, of no greater intellectual gratification than those which follow from the solution in this way of the great problems of the law as they successively present themselves."

Mr. Justice Holmes, of the Supreme Judicial Court of Massachusetts, in a recent address spoke of this system as follows:

"Why, look at it simply in the light of human nature. Does not a man remember a concrete instance more vividly than a general principle? And is not a principle more exactly and intimately grasped as the unexpressed major premise of the half dozen examples which mark its extent and its limits than it can be in any abstract form of words? Expressed or unexpressed, is it not better known when you have studied its embryology and the lines of its growth than when you simply see it lying dead before you on the printed page?

"I have referred to my experience. . . . With some misgiving I plunged a class of beginners straight into Mr. Ames's Cases. . . . The result was better than I even hoped it would be. After a week or two when the first confusing novelty was over, I found that my class examined the questions proposed, with an accuracy of view which they never could have learned from text-books, and which even exceeded that to be found in the text-books. . . .

"My experience as a judge has confirmed the belief I formed as a professor."

Mr. Dicey in a recent review of Finch's Cases on Contracts, says:

"To master the rules of English law you must study these rules as applied to the affairs of life. They are maxims which derive their full real force from their application to cases. As Paulus excellently said of Roman law, confuting by anticipation the pretentious and shallow writers who fancied that Roman lawyers were less practical than English ones, '*Non ex regula ius sumatur, sed ex iure quod est regula fiat.*' Judicial decisions are legal experiments; reports are the record of such experiments, our evidence of '*ius quod est.*' The lawyer or student who really enters into the results of a line of leading cases learns more than a few verbal maxims which may be committed to memory. He sees what is the true meaning of legal doctrines when applied to facts; he 'becomes,' as Mr. Finch well expresses it, 'familiar with the tone of thought, the attitude of mind, which prevail in our courts; he gets a touch of the genius of English law,—I may venture to add of the English race.' He learns in short, by the only method by which it can be learned, the notion of justice which the lawyers and judges of England have developed by labors extending over centuries, and have impressed upon the minds of English people."

In conclusion it should be said that the cardinal difference between the method of instruction by cases, and any other

method of instruction by which law is taught as a science, is that the student is required to deal with the original sources of the law, and does not take his law at second-hand. The method is not a rigid system, but is so flexible that two men may use it as a basis of instruction, and the teaching of the one hardly suggest the teaching of the other. It is distinctly a method productive of individuality and efficiency in teaching, and of a scientific spirit of investigation, independence, and self-reliance on the part of students.

STATEMENT FROM THE PRESIDENT'S REPORT FOR THE ACADEMIC YEAR 1890–1 AS TO THE CHANGES IN THE CURRICULUM OF THE SCHOOL OF LAW.

The differences between the new arrangement of the course and the old are clearly indicated by the following points:

1. The new course assumes three years as the unit of the course, instead of adding a third year to the old two-years' course, as though that were a thing complete. This is in accordance with the report of the special committee, to which was referred the subject of a third-year's course in the Law School, presented to the Trustees May 7, 1888.

2. The new course is based upon the concurrent study of different subjects.

3. It permits the study of public law as part of the equipment for the degree.

4. It adjusts the hours so as to discourage office work during the first two years, while facilitating it in the third year.

5. The hours have been so arranged as to throw open to the students of law many privileges of study in other departments of university instruction which would otherwise be denied to them.

6. The new course offers a broader range of choice in legal subjects by establishing numerous elective studies.

7. It relieves the professors from repeating the same work twice a day, but it requires their attendance at the school through the entire academic year.

Nor is it to be inferred that any radical change in the system of instruction has been desired. Each professor will be left to his own methods, in the expectation that he will aim at accomplishing the best results. The university has been criticised for fixing the hours of attendance for the second-year class at times which will make it impossible for such students to be also in offices during that year, as though by so doing the university discriminated against poor but worthy students. It would be better for Columbia to cease to be than to forget that she owes a duty to the whole community. But that duty is not to be discharged by levelling down her work to the demands of those who can give to it but a portion of their time. Columbia believes that her duty as a university to the profession of law is only discharged when she offers the best possible education in law, even though, as an incident thereto, she demands the whole time of the student.

TABLE SHOWING THE CHANGES AS TO THE NUMBER OF HOURS OF INSTRUCTION REQUIRED OF CANDIDATES FOR THE DEGREE OF LL.B.

	1890–91 Hours per week.	1891–92 Hours per week.	1893–94. Hours per week.
Junior Year	$7\frac{1}{2}$	10	13
Middle Year	$7\frac{1}{2}$	12	14
Senior Year	10	10	12
Total	25	32	39

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